

STATEMENT OF  
THE HONORABLE JOHN HOSTETTLER  
CHAIRMAN  
SUBCOMMITTEE ON IMMIGRATION,  
BORDER SECURITY, AND CLAIMS  
ON THE OVERSIGHT HEARING ON  
THE ENERGY EMPLOYEES  
OCCUPATIONAL ILLNESS  
COMPENSATION PROGRAM ACT  
NOVEMBER 15, 2006

Today's hearing is the fourth in the series of oversight hearings the Subcommittee has been holding on the Energy Employees Occupational Illness Compensation Act (EEOICPA). The point of this hearing and the fifth hearing to follow in December is to review what the Committee's oversight efforts have revealed as weaknesses in the program; the status of any reforms made to address those weaknesses; and discussion of any emerging issues that may need

to be addressed in the next Congress.

Because of their complexity, the Subcommittee is compelled to make an effort to create as much of a road map of the program and its problems as possible for those who would provide future oversight.

The Judiciary Committee's oversight did not begin with the investigation on implementation of the OMB passback options.

This Committee has taken an active role in policing this program from the start and I sincerely hope that rigorous oversight by this Committee will continue in the 110<sup>th</sup> Congress and future Congresses until we can all say with confidence that "Yes, we are fulfilling the promise we made to these veterans of the Cold War when we created this program." I would have liked to have been able to say that already, but the record created by these hearings tells us that is just not so.

Shortly after assuming the chairmanship of this subcommittee, I sent a letter to the General Accounting Office asking that they examine the key components of the program. That was May 2003. As time went on, the Subcommittee heard several complaints on the way the program was functioning and the behavior of officials involved in the program.

That prompted a November 2004 request to the Department of Health and Human Services for extensive documents and information concerning the functioning of the program, the Advisory Board of Radiation and Worker Health, and that Board's audit contractor.

Subsequently, after the initial review of their submissions, a request was made for GAO to expand the scope of their review of Subtitle B which they agreed to. During 2005, the Committee sent letters to various agencies regarding concerns with different actions taken

with regard to the program.

One letter to the Attorney General concerned the use of classified information to decide a claim under the program and asserted that congressional intent was that transparency in the processing of claims be an essential principle of this program. A second letter concerned the removal of two Board members - a worker and a doctor. No resolution to either of those concerns was forthcoming.

In the case of the request by Chairman Sensenbrenner that the removed Board members be offered reinstatement so that the Board would not lose their expertise and experience with the program, the Committee received a one sentence letter thanking us for our comments.

On October 18, 2005, the White House announced the appointment of three new Board members, one of whom had major conflict of interest issues since he was associated with a

company whose employees included immediate family members and that had been contracted to do dose reconstructions for NIOSH. Only one new worker representative was included in the new appointments.

When the OMB passback memo surfaced, the Subcommittee began planning hearings. Those hearings were, at a minimum, to include the Department of Labor and the Office of Management and Budget. The Committee's invitation was met with resistance by DOL and HHS, but they both eventually provided witnesses. That was not the case with OMB.

Administration officials suggested that a exchange of letters between OMB and the Committee containing appropriate assurances and stating good faith actions that would be taken to assure the claimant community of the Administration's rejection of the passback options would be more appropriate than OMB testifying.

There were several exchanges of draft letters between OMB and Committee staff as well as a meeting between myself and the Administration to personally express the need for specific actions and/or statements that OMB had to make in lieu of testifying.

One of those actions was to either offer reappointment to the Board members removed without cause or provide a plausible explanation why they had been removed while other less qualified members who had made their support of DOE management very clear had been retained.

When it became clear that action was non-negotiable for the Committee, OMB took the broad, non-specific letter of explanation with regard to the OMB passback and used it as the basis for letters responding to Senate and House

Member offices.

They refused to consider reversing the actions of the Administration with regard to the two pro-worker Advisory Board members.

During the first week of August 2006 NIOSH was notified by the White House Office of Personnel that Wanda Munn and Roy Dehart had been retired from the Board effective immediately as part of the ongoing activity of rotating Board Members.

Dr. Dehart had filled one of the medical slots on the Advisory Board. Ms. Munn, an engineer and strong supporter of the DOE complex, does not appear to have been qualified to fill any of the statutorily required Board slots - medical, scientific, or worker.

It was brought to the Subcommittee's attention that Ms. Munn was unhappy with her retirement and hoped to utilize means to get back on the

Board.

Amazingly, on August 11, 2006, NIOSH was notified by the White House that Dr. DeHart and Ms. Munn were to be reappointed for another 3 year term. While Dr. DeHart declined reappointment, Ms. Munn, not surprisingly, accepted.

When the White House was asked why reappointment was so quickly offered to an individual who didn't even meet the statutory qualifications for serving on the Board after the request of the Chairman of the Judiciary Committee for the reappointment of two qualified Board members was ignored, the Administration never provided an explanation.

The Board currently has only 2 worker representatives –and a reappointed member who has stated her position that none of these workers are sick because of their exposure to



radiation.

Obviously, an impartial review of the validity of the science used to determine whether to approve claims for radiation exposure won't be forthcoming from that Board member.

I strongly encourage those who police this program in the future to aggressively pursue balancing this Board and legislation to provide for a more transparent appointment process appears to be the only real solution.

A February 22, 2006 letter requested that DOL's Employment Standards Administration (ESA) provide all documents related to the 5 options outlined in the OMB passback prior to the Subcommittee hearing on March 1, 2006. The Subcommittee received a box of about 4,500 pieces of paper from DOL on March 17, 2006 -- none of them substantive information related to the request.

After DOL complained that the request was overly broad, the Subcommittee reduced its request to the documents of 25 key DOL-ESA staff.

No further documents were received until the beginning of July. No documents or communications were received regarding the OMB passback and no communications between Labor and OMB were forthcoming.

The Committee was informed on July 21<sup>st</sup> that the office within DOL that handles EEOICPA claims indicated to the Legislative Affairs office that there was no need to provide any of the communications with OMB because they constituted internal budget negotiations – privileged documents not available to anyone. Labor was told by the Committee that ESA had misinformed them.

In support of that position, the Subcommittee requested and received a Congressional Research analysis of the appropriateness of the document request made to the Labor Department which makes it clear that no privilege could be assigned to the documents and communications that were part of the Committee's inquiry.

On the eve of a vote to authorize a subpoena to DOL, high level assurances were made to the Committee to provide all but a few documents to the Committee and the rest were to be made available in a reading room for Committee viewing.

HHS had withheld several binders and allowed all but one to be viewed by Committee staff. It is the Committee's understanding that the binder withheld contained HHS' communications with OMB on the passback. So much resistance from

these agencies fortifies the argument that their actions would not bear well under scrutiny.

Those involved in this backroom manipulation of the program have destroyed the Government credibility again. This program was supposed to assure workers the deceit was over and their government was finally going to do right by them. Those tasked with implementing the program have failed that purpose miserably and they need to be exposed for what they have done. I will be including a record of the Committee's correspondence on our concerns in the hearing record as well as other pertinent documents that provide a clear view of the actions of those running this program.

Under oath, the OMB witness on July 20, 2006, rejected each of these 5 options and assured us they were not pursuing any of them. We received the same assurances under oath on March 1, 2006, from DOL. Evidence included in both DOL and HHS submitted documents or

included in the documents withheld and only viewable to Committee staff do not support those statements and the hostile attitude of those running this program towards the claimants and their advocates gives me little confidence that there is any sincere effort to change by these officials. Obviously, the babysitting of these individuals must continue and I encourage it wholeheartedly.

Time is of the essence for fulfilling our promise to this quickly aging population of atomic weapons employees. Perhaps soon those who run this program will do the right thing and take care of these workers and their families competently and with an attitude of respect that is clearly not present at this time.